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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,650	10/09/2001	Peter J. Anslow	708-1003	6193
23644	7590	01/17/2006	EXAMINER	
BARNES & THORNBURG, LLP P.O. BOX 2786 CHICAGO, IL 60690-2786			PAYNE, DAVID C	
		ART UNIT	PAPER NUMBER	
			2638	

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/973,650	ANSLOW ET AL.	
	Examiner	Art Unit	
	David C. Payne	2638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 September 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,6,8,16-19,27 and 28 is/are rejected.
- 7) Claim(s) 2-5,7,9-15,20-26 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 13 September 2005 have been fully considered but they are not persuasive.
2. Measuring Q values and S/N ratios as is done in Taga inherently measures noise and amplitude distortion, which is the whole purpose of the invention. This is well understood by one of ordinary skill in the art.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Taga et al. US 5,585,954 (Taga).

Regarding claim 1, Taga disclosed

A method of measuring the amplitude distortion component in an optical transmission signal subject to noise and amplitude distortion components, the method comprising determining the amplitude distortion component by analyzing

the bit error ratio (BER) of the signal as a function of a movable decision threshold (e.g., Taga col. 4 lines 40-50). It is inherent that measuring Q and S/N ratios is a measurement of noise and amplitude distortion.

Regarding claims 6 Taga disclosed

the step of providing said BER values by comparing the said signal with a said variable decision threshold (e.g., Taga col. 4 lines 40-50).

Regarding claim 27 Taga disclosed

An optical receiver comprising detector means to detect optical signals from an optical transmission system and convert them into their electrical equivalent, the receiver comprising measuring means to measure the amplitude distortion component in a said optical signal subject to noise and amplitude distortion components, the measuring means adapted to measure the amplitude distortion component by analysis of the bit error ratio (BER) of the signal as a function of a movable decision threshold (e.g., Taga col. 4 lines 40-50).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 8, 16-19 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taga et al. US 5,585,954 (Taga) in view of Scholz et al. US 5,325,397 (Scholz).

Regarding claims 8, 16-19, 28

Taga does not disclose a method performed by a programmed computer with a stored program. Scholz disclosed a computer that performs a BER rate detection against thresholds (see Scholz e.g., 57 of Figure 8. It would have been obvious to one of ordinary skill in the art at the time of invention to use a processor to perform a BER threshold calculation because this would allow easy adjustment of the algorithm to fine tune the stored (60 of Figure 8) BER calculation method.

Allowable Subject Matter

5. Claims 15 and 26 are allowed.
6. Claims 2-5, 7, 9-15, and 20-26 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

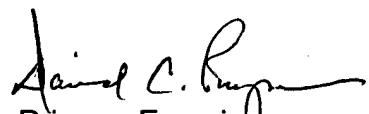
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Payne whose telephone number is (703) 306-0004. The examiner can normally be reached on M-F, 7a-4p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (703) 305-4729. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dcp



Primary Examiner
AU 2638